IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 154 of 2001

Reserved on : 28.12.2007.
Date of Decision: 31. 12. 2007.

State of H P. Appellant.

Versus

Manpreet Singh. Respondent.

Coram

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? Yes

For the appellant : Sh.D.S. Nainta, Deputy Advocate General.

For respondent. : Shri Deepak Kaushal, Advocate.

Surinder Singh, J .

State has challenged the acquittal of the respondent for the offences punishable under Section 279 and 304-A of the Indian Penal Code.

Heard and gone through the record.

In brief, the prosecution case has been that on 12-2-1996 at about 10.00 a.m., Rupender Kumar complainant was standing near a shop in village Tokyo. His grand-father Daya Ram aged about 70 years, was going to fetch a cigarette from the road side shop near-by. In the meantime, respondent came on his Motor Cycle No. UP-07D-3078 and hit Shri Daya Ram just little ahead of the shop of Ram Pal. Ajay Kumar was also present on the spot. Daya Ram fell down on the road with bleeding injuries. Motor Cyclist along with pillion rider fled away from the spot leaving the Motor Cycle behind. The injured was taken to the Hospital. He was medically examined (Exhibit DW2/A) but later on succumbed to his injuries. On the

---

[1] Whether reporters of the Local papers are allowed to see the judgment? Yes.

basis of the information by the complainant, FIR Exhibit PW6/B was formally registered. Police visited the spot and prepared the site plan Exhibit PW6/A, took into possession the motor cycle aforesaid vide memo Exhibit PW1/A and its documents. The Police recorded the statements of the witnesses.

After completing the investigation, the challan against the respondent was presented in the Court.

Finding a prima facie case under the aforesaid sections, the respondent was charge-sheeted but he pleaded not guilty and claimed trial.

Prosecution examined its witnesses to prove the case but at the end of the trial, the respondent was acquitted on the ground that there was a contradictory evidence of the prosecution witnesses with respect to the alleged rash and negligent driving by the respondent and further, that it had come in evidence that on seeing the old man Daya Ram, he blew horn, he stopped for a while but when motor cyclist reached nearer to him, he hurriedly came before it and collided with the motor cycle. There was also conflicting evidence whether the accident in question had taken place on the pucca portion or on the kutcha portion of the road as alleged. Discrepancies were also pointed out in the site plan prepared by the Police and thus taking note of the discrepancies and other conflicting evidence, the learned trial Court held that the prosecution had failed to establish the charge against the respondent.

Legally, in a case of rash and negligent act, if the prosecution is able to prove the essential ingredients of the offence, the onus to disprove it shifts upon the respondent to show that he had taken due care and caution to avoid the accident. It is an admitted fact that said Shri Daya Ram had died in the accident caused by the respondent but still it is incumbent upon the prosecution to prove that it was the rash and negligent act of driving to conclude the rash and negligent driving of the respondent. In other words, it must be proved that the rash or negligent act of the accused

was causa causans and not causa sin qua non (cause of the proximate cause). There must be some nexus between the death of a person with rash or negligent act of the accused. According to Rupinder Parkash (PW4) deceased was hit by the motor cycle which was in a high speed but the speed is no criteria to hold the act as rash or negligent. The respondent in his statement under Section 313 of the Code of Criminal Procedure has explained that on seeing the deceased, he had blown the horn and he (deceased) stopped on the road. As soon as he reached near him, he immediately tried to cross the road and got hit. His version has been duly corroborated by Hardeep Singh (DW1) who was a pillion rider with him. Ajay Kumar (PW1) has admitted this version that the respondent had blown the horn and Daya Ram on hearing it, had stopped for a while. In these circumstances, if a person suddenly crosses the road, without taking note of the approaching vehicle and its Driver may not be in a position to save the accident, it will not be possible to hold the Driver guilty of the offence. In the instant case, the deceased knowing fully well at least the approaching vehicle stopped on hearing the horn while crossing the road but when the motor cycle reached near him, he darted before it and the accident took place. Thus in my opinion the prosecution could not prove the offence charged against the respondent beyond reasonable doubt that the respondent was driving the vehicle rashly or negligently. Therefore, in these circumstances, the learned trial Court had rightly acquitted the respondent of the charges framed against him. As such, no interference in the impugned judgment of acquittal is called for. Accordingly the appeal is dismissed. The respondent is discharged of his bail bonds entered upon by him at any stage of the trial.

(Surinder Singh),
Judge.

December 31st, 2007.
(bm)